

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT AND TRANSPORTATION

Call to Order: By **VICE CHAIRMAN SEN. RICK LAIBLE**, on January 8, 2003 at 8 A.M., in Room 317-B Capitol.

ROLL CALL

Members Present:

Rep. John Brueggeman, Chairman (R)
Sen. Rick Laible, Vice Chairman (R)
Sen. Gregory D. Barkus (R)
Sen. Mike Cooney (D)
Rep. Monica Lindeen (D)
Rep. John Sinrud (R)

Members Excused: None.

Members Absent: None.

Staff Present:

Greg DeWitt, Legislative Fiscal Division
Christi Moyer, OBPP
Amy Sassano, OBPP
Misty Shea, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape stamps indicate information that is found below.

Committee Business Summary:

Hearing(s) & Date(s) Posted: Appellate Defender, 1/8/2003
Executive Action: None

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 3; Comments:
Committee introductions.}*

CHAIRMAN BRUEGGEMAN opened with a general discussion of the committee schedule by **Greg Dewitt of the Legislative Fiscal Division(LFD)**. How and when executive action will be taken was addressed.

{Tape: 1; Side: A; Approx. Time Counter: 7 - 10}

Greg Dewitt led the committee through an overview of the **Legislative Budget Analysis Book**.

CHAIRMAN BRUEGGEMAN explained how to view the 2000-2003 fiscal years revised budget base. Questions followed in reference to the handout for the prior days **Joint meeting of the House Appropriations and Senate Finance Committees hearing**.

{Tape: 1; Side: A; Approx. Time Counter: 15.7 - 23.5}

Greg Dewitt addressed the statewide present law adjustments and their intentions through the fiscal years 2004 and 2005. Highlights were; vacancy savings, inflation, and fixed costs approval. Mr. Dewitt referenced page A-73 of the budget analysis book as the funding for the Secretary of State office is slightly different. As he explained, internal service fund rates require the committee's approval but enterprise fund rates do not.

{Tape: 1; Side: A; Approx. Time Counter: 23.6 - 27.2}

Mr. DeWitt led the committee through an overview of decision packages relating to the Appellate Defenders budget. Operating costs for fiscal years 2004 and 2005 were broken down in accordance to the budget base being taken down to zero.

{Tape: 1; Side: A; Approx. Time Counter: 27.2 - 29}

CHAIRMAN BRUEGGEMAN began the Appellate Defender hearing with **Chad Wright** who is the **Appellate Defender** speaking on behalf of his office. **Mr. Wright** introduced the staff; Attorney Christina Guest, and Verna Stewart the office manager and paralegal. Mr. Wright provided the Committee with handouts detailing needs.

EXHIBIT(jgh03a01)
EXHIBIT(jgh03a02)
EXHIBIT(jgh03a03)
EXHIBIT(jgh03a04)

{Tape: 1; Side: B; Approx. Time Counter: 0.2 - 3.7}

Mr. Wright told the committee that the fiscal year 2003 funding was inadequate and that cases had to be declined because of it. He then explained under Montana law why the office exists and what they do.

{Tape: 1; Side: B; Approx. Time Counter: 3.7 - 14.6}

Mr. Wright informed the committee that all their cases are court appointed. In calendar year 2002 the three-person office had 80 active cases. These involved direct appeals to the Montana Supreme Court or post conviction release which is a process that allows a client to acknowledge happenings outside of the courtroom such as later found DNA evidence. **Mr. Wright** followed by explaining office costs and how they run a bare bones operation. Communication is costly since most clients are in the prisons which subjects them to high rates on collect calls and an 800 number is considered a security risk by The Department of Corrections. Some travel is also necessary to the prisons and for training purposes.

Mr. Wright emphasized the consequences of the **Appellate Defenders Office** not being allowed the funding to do their job adequately. He referenced a current lawsuit involving the State of Montana being named as a defendant for not providing adequate funding and services to poor people in criminal cases. Their office is not named, but the commission that oversees them is. Currently they are at 58% of the operating budget after the special session cuts. This is why they can't accept new cases as other costs such as rent are outside their control. Staff retention, salary range, and caseload comparison were key points regarding the request for pay increases.

Questions from Committee Members and Responses:

SEN. BARKUS asked **Mr. Wright** if the office was under any type of violation when they turn down cases. **Mr. Wright** stated that they were not in violation under any statutes. **SEN. BARKUS** then asked when a case is turned down if it is then turned back to the county and funded there. The response affirmed that the county first pays for representation then is reimbursed by the state.

SEN. LAIBLE asked **Mr. Wright** if he knew the amount other attorney's bill the state for taking cases declined by them and what percentage of appeals on a monetary formula would that be. **Mr. Wright** estimated that about 20% of criminal appeals in the state are handled by his office. He added that he could later provide more current statistics on this matter and on district court reimbursements.

{Tape: 1; Side: B; Approx. Time Counter: 25.2 - 29}

SEN. LAIBLE questioned if it was safe to assume that most appeals are funded by the person they are done for and not the state. **Mr. Wright** did not know, but said that the majority of cases in Montana on appeal are D.U.I.'s handled by private attorneys.

SEN. LAIBLE asked **Mr. DeWitt** if he could find out how much the state pays in appeals because it appears that funding the Appellate Defender is a savings.

SEN. COONEY asked **Mr. Wright** if court appointments could be refused by his office to save money as well. **Mr. Wright** explained that he files motions to do so and has had to appear before judges to explain why and twice his motions were denied. **REP. LINDEEN** wanted to know the costs of filing these briefs. **Mr. Wright** answered that it didn't require much as the motions are uniform. Questions and answers referred back to Montana's general fund base and how it is configured.

{Tape: 2; Side: A; Approx. Time Counter: 5 - 24}

Sen. Cooney, and **Rep. Linden** requested clarification of the Appellate Defenders biennium request and the numbers. **Christi Moyer of OBPP** clarified that the special session numbers and those prior to the special session were both accounted for in the budget. **REP. SINRUD** wanted to know with the budget request could the Appellate Defenders office handle more appeals. **Mr. Wright**

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responded that with two additional staff (one attorney and one paralegal aid) they could handle most of the indigent criminal defense appeals in Montana, but to continue to do post conviction work as well they might need another attorney. A detailed explanation of the process was provided to verify why. Several financial questions followed. **REP. SINRUD** made a request of **Mr. Dewitt of LFD** to provide more numerical information to the Committee on the states handling of appeals.

ADJOURNMENT

Adjournment: 9:35 A.M.

REP. JOHN BRUEGGEMAN, Chairman

MISTY SHEA, Secretary

JB/MS

EXHIBIT (jgh03aad)